



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action
Agency Background Document

Agency Name:	State Water Control Board
VAC Chapter Number:	9 VAC 25-71-10 et seq.
Regulation Title:	Regulations Governing the Discharge of Sewage and Other Wastes from Boats
Action Title:	Adoption of Regulations Governing the Discharge of Sewage and Other Wastes from Boats
Secondary Action:	Repeal 9 VAC 25-70
Secondary Action:	Repeal 9 VAC 25-730
Date:	March 5, 2001

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose*

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this proposed action is to provide a state regulation to address discharges of sewage and other wastes (decayed wood, sawdust, oil, etc.) from boats and to implement enforcement of designated no discharge zones. The proposed action would replace two existing boat regulations that have limited enforcement capabilities with one regulation that would effectively serve their purposes, apply to all waters of the state as necessary and provide specific language regarding enforcement and penalties. Additionally, the 2001 General Assembly has passed HB 1758 that will require that the State Water Control Board promulgate a boating regulation to become effective by July 2002. This regulation will respond to that requirement.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The basis for this regulation is Section 62.1-44.33 of the Code of Virginia, which empowers and directs the State Water Control Board to adopt and promulgate all necessary rules and regulations for the purpose of controlling the discharge of sewage and other wastes from boats.

Need*

Please detail the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied

Boat sewage regulations are necessary to control the discharge of sewage from boats in order to protect the integrity of state waters and the health, safety and welfare of citizens using those waters. A summary of the existing legal setting for boat sewage regulations is as follows.

Federal requirements are in the Clean Water Act §312 (Chapter 26 of Title 33) and in 40 CFR Part 140. These set the standards for discharges from boats with installed toilets. Boats without installed toilets are not regulated by these standards. The standards require treatment to a specified degree prior to discharging (Marine Sanitation Device or "MSD" Type I or II), or holding tanks (MSD Type III) which do not discharge but are pumped out at marinas having pump out equipment. The federal law prohibits states from adopting more stringent standards for discharges from boats, however, an exception is provided. If a state wishes to provide more protection for certain waters it may prohibit the discharge of all sewage from boats, whether treated or not, into these waters if it first obtains approval from EPA. Basically EPA approval requires that there be sufficient pump out facilities to remove sewage from holding tanks in the area for which this protection is requested, although considerable other information requirements are made by EPA. If EPA approval is obtained, what is commonly referred to as a no discharge zone is established and no sewage discharges from boats are allowed.

State law addresses boat sewage at §62.1-44.33 as described above in "Authority". One of the two existing regulations promulgated under this authority is Chapter 9 VAC 25-70. Some general requirements of this regulation are that it provides for control of miscellaneous discharges other than sewage from boats into state waters, requires marinas to notify patrons of requirements, addresses penalties, and prohibits "excrement" discharges which can be taken to address those sewage discharges not covered by federal law such as from boats without installed toilets. (This prohibition is not clearly stated elsewhere in state or federal law.) Other than these sections, the regulation is limited to designated shellfish growing areas. For these areas, the regulation requires boats with installed toilets to have a holding tank (MSD Type III) if it is regularly

moored, berthed or docked in shellfish growing areas unless it had an operational MSD Type I or II on the date of adoption of 9 VAC 25-70. Boats relocated to these areas, or redesignated shellfish growing areas are addressed similarly. In other words, the state requirement in shellfish growing areas is the same as the federal requirement as long as one had an operational MSD in 1976 (date of adoption of regulation). Otherwise, a holding tank is required. This appears to contravene federal law which would allow treated discharges. However, it does not because the regulation's effective date is tied to the date of EPA approval of a no discharge zone, thus making the regulation only effective in designated no discharge zones where all discharges, treated or not, may be prohibited by the state. (It may now be a moot point, but this also makes the language that grandfathers operational MSD Types I and II obsolete.) Problems with this are that the general requirements mentioned above that could be applied to all state waters are not enforceable without designation of a no discharge zone, they are then unnecessarily limited to no discharge zones, and the specific no discharge zone requirements are limited to shellfish growing areas. The regulation also establishes a registration/decal program that may prove awkward to manage. This regulation has never become effective because EPA has never approved a no discharge zone in shellfish growing areas. The first and so far only no discharge zone in the state that has received EPA approval is in Smith Mountain Lake. Problems with obtaining EPA approval in shellfish areas in the past have been due to a lack of available pump out facilities at marinas. It is believed that this is no longer a problem, since the Virginia Department of Health has successfully managed a marina program that requires pump out equipment installation. For this reason, the designation of additional no discharge zones is possible. This regulation should be replaced or updated such that the general boating requirements are effective in all state waters regardless of no discharge designation, and such that no discharge zones are covered in any designated areas of the state instead of shellfish growing areas only.

9 VAC 25-730 is the second state regulation pertaining to boat sewage. It was recently adopted in response to a 1998 General Assembly enactment. Due to sewage and health problems in Smith Mountain Lake the enactment required that the State Water Control Board petition EPA for no discharge zone approval and if obtained prohibit all sewage discharges from boats accordingly. EPA approval was obtained, and in order to fulfill the requirements of the General Assembly enactment to prohibit the discharges as soon as possible and prior to another boating season, 9 VAC 25-730 was adopted as final and exempt from the APA public participation requirements since it was required by law. For this reason, the regulation could go no further than required by law, and thus was limited to a prohibition of discharges in Smith Mountain Lake. While this regulation will allow some degree of enforcement in the forthcoming boating season, a regulation with clearly specified enforceable requirements for boat owners may be preferable. It is our understanding that this is the impetus for House Bill 1758 which passed this years General Assembly, and will require that the State Water Control Board promulgate a boating regulation by July 2002. (Note that House Bill 2607 was also passed requiring that the Department of Game and Inland Fisheries enforce the no discharge zone in Smith Mountain Lake.) If this regulation is modified to enhance enforcement capabilities, it could also be expanded to cover any other no discharge zones designated within the state since it would now go through the APA public participation process.

The above regulation changes are needed, promulgation of a boating regulation will likely be required by law, and it is believed that both needs are best accomplished by combining the two existing boating regulations into one fundamental boating regulation.

Issues that will need to be addressed include enforcement of prohibitions of discharges in no discharge zones; what, if any, physical changes should boat owners be required to make to a marine sanitation device in order to ensure no-discharge in designated no discharge zones; and applicability of provisions to boats not routinely moored or docked in no discharges zones.

Substance*

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed.

The proposed regulation will replace 9 VAC 25-70 and 9 VAC 25-730 with one regulation to accomplish their intended purposes but without their limitations. It will address discharges of sewage and other wastes from boats, will prohibit all discharges of sewage from boats, whether treated or not, into state waters that have received federal approval as a boat sewage no discharge zone, may require that enforceable measures be taken by boaters to ensure there are no discharges, and set penalties for violation of the regulation.

Alternatives*

Please describe the process by which the agency has considered, or will consider, less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action, and the reasoning by which the agency has rejected any of the alternatives considered.

It is expected that legislation will mandate the adoption of a boating regulation to implement enforcement of designated no discharge zones. Otherwise, alternatives might be to amend one or both of the existing boating regulations.

Public Participation*

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also indicate whether a public meeting is to be held to receive comments on this notice. Indicate that 1) the agency is not holding a meeting because the agency has authorized proceeding without holding a meeting or 2) the agency is holding a meeting. If a public meeting is to be held, indicate where information on the public meeting (i.e., date, time and place) may be found.

The Board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) impacts of the regulation on farm or forest lands. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail to Michael B. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240, (804) 698-4065, by fax to (804) 698-4032, or by email to mbgregory@deq.state.va.us. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the close of the comment period.

A public meeting will be held and notice of the meeting can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Participatory Approach*

Please indicate the extent to which an ad hoc advisory group will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposal. Any person who desires to be on the committee should notify the agency contact in writing by close of the public comment period and provide their name, address, phone number and the name of the organization they represent.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that this regulation will have a direct impact on families, however, disposable family income could be affected by the costs of making any changes to a boat required to ensure no discharge.